Filed 1/25/19 Malliet v. Voit CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRIAN K. MALLIET, Cross-complainant and Appellant, v. ROBERT D. VOIT et al., Cross-defendants and Respondents.	G053757, G053767 (Super. Ct. No. 30-2013-00652567-CU-CO-CJC) O P I N I O N
BRIAN K. MALLIET, Individually and as Trustee, etc. Cross-complainant and Appellant, v. ROBERT D. VOIT, Individually and as Trustee, etc., et al., Cross-defendants and Respondents.	G053912, G054279

BRIAN K. MALLIET, Individually as as Trustee, etc. Cross-complainant and Appellant, v. ROBERT D. VOIT et al., Cross-defendants and Respondents.	G054385

Appeal from judgments and orders of the Superior Court of Orange County, Mary Fingal Schulte, Judge, and Kimberly Knill, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part and reversed in part with directions.

Rutan & Tucker, Steven J. Goon and Gerard M. Mooney, for Cross-complainant and Appellant.

Grant, Genovese & Baratta, David C. Grant and Marcus G. Larson for Cross-defendants and Respondents.

* * *

INTRODUCTION

In these five consolidated appeals, appellant Brian Malliet seeks to modify or overturn various judgments and orders issued by the trial court in favor of respondent Robert Voit.[1] Voit and Malliet were members of a limited liability real estate company with multiple operations. They had a falling out, Voit fired Malliet, and a wide-ranging lawsuit ensued, precipitated by Malliet's refusal to complete a contractually mandated appraisal process to determine the value of his interest in the limited liability company.

[1] Both Voit and Malliet were sued individually and as trustees of their respective trusts. For convenience, we refer to the parties by their surnames only.

Voit sued Malliet, and Malliet cross-complained. Voit ultimately dismissed his complaint, and the case went to trial on the Malliet cross-complaint. After a six-day court trial, the court found in Voit's favor on all issues.

Malliet's appeal encompasses two major issues. First, did the court err when it held that the appraisal process to determine the value of Malliet's interest was no longer viable? Second, did the court err when it held that Malliet was not entitled to any part of the repayment of a $5 million promissory note between Voit and the limited liability company?

We affirm the court's decision as to the first issue. The trial court ruled that Malliet waived any entitlement to participate in the process, and we must affirm a trial court's decision supported by substantial evidence, as it was here. But we reverse the court's decision regarding the note. The undisputed facts show that Voit would be unjustly enriched if he kept all of whatever the limited liability company repaid on the note.

FACTS

We have streamlined the narrative to include only those facts relevant to the issues Malliet has identified for appeal. It still requires considerable exposition.

Voit has been involved in commercial real estate since the early 1960's. He started his own company in 1971, developing small office buildings. He graduated to larger projects, and eventually his enterprise included a construction company, a property management company, and a commercial real estate brokerage.

Malliet began working for the Voit commercial real estate brokerage immediately after graduating from college in the late 1980's. He worked his way up from a lowly "runner" to executive vice-president. At some point during the 2000's, he struck out on his own and formed bkm Development Company, which invested in and developed commercial properties.

In 2008, with the financial crisis looming, Voit saw an opportunity to take advantage of the economic downturn. He and Malliet met to discuss Malliet's return to the Voit fold through reconstitution of an existing Voit entity, Voit Real Estate Services, LLC (the Company), which had been formed in 2000. Malliet testified that his role in the new enterprise was to would be "execution." He also agreed to contribute his own real estate development company to the new business.

Voit and Malliet signed a memorandum of agreement in early 2009, and Malliet began working for the Company in early March. He and Voit executed a written operating agreement for the Company in 2009. The second amended and restated iteration of the operating agreement, the operative agreement (the Agreement), was executed in mid-2011.[2] Voit held an 80 percent interest in the Company; Malliet held 20 percent.

Eventually, the Company became the limited partner of Voit Real Estate Services, LP (the Limited Partnership), with a 99 percent interest. Voit Corporation was the general partner and held a one percent interest in the Limited Partnership. After the Limited Partnership was formed, it assumed most of the Company's activities.

The Agreement provided that Voit would fund the Company's operating requirements for the calendar year 2009 as a capital contribution. He would lend the Company money to fund its operating requirements for the year 2010. As of 2011, the Company's capital requirements would be funded pro rata by Voit and Malliet through capital calls.

---

[2] The Agreement defined the Company's "core business" as "(i) re-launch and re-structure the Company from the existing Voit platform, with centralized management and control of all services and activities in the Company, (ii) perform services, both for companies and projects managed by the Company and on third party fee basis (e.g., for REO of lenders), to include development, property acquisition (possibly including investment fund vehicles), property management, asset management and real estate brokerage, as the Members shall deem appropriate,(iii) solicit asset, property management, entitlement and REO activities, as the Members shall deem appropriate and (iv) invest, directly or indirectly, in real estate, including to explore the feasibility of forming/managing for third parties investment funds and/or single investment property single purpose entities, as the Members shall deem appropriate."

After Voit and Malliet reached their agreement, the Company embarked on an ambitious program of growth. Existing brokerage offices were remodeled and expanded, and new offices were opened. New business lines, such as property management, were added. More than 60 additional employees were hired.

Unfortunately, the Company – and the Limited Partnership after it took over – consistently lost money, and operations were funded through loans. The Company borrowed from Voit. The Limited Partnership borrowed from the Company. The Company financed these loans to the Limited Partnership through loans from Voit and capital calls.

The 2011 Promissory Notes

The Agreement provided for an automatic 10 percent increase in Malliet's interest in the Company at the end of 2011 and another 10 percent increase at the end of 2013. The Company needed money to conduct its business in 2011, which Voit undertook to provide.[3] At this point, however, he objected to being the sole source of funds and wanted Malliet to put in his (20 percent) share. Accordingly, two notes were created. One note was between the Company and Voit for $5 million. The other note was between Voit and Malliet for $1 million, the idea being that Malliet would repay Voit for 20 percent of Voit's loan to the Company. As it turned out, the Company availed itself of $4.5 million of the $5 million loan fund.

The $1 million note between Voit and Malliet had a due date of December 31, 2011. The note included a security agreement whereby Malliet pledged his 10 percent increase in the Company, due at the end of 2011, as security in the event he did not repay Voit on time.

---

[3] The Agreement provided, "If financing is unavailable to the Company to conduct the business of the Company, . . . additional contributions to the capital of the Company from and after January 1, 2011 shall be made by the Members, pro rata based upon their 'Percentage Interest' . . . ."

If Malliet defaulted, the $1 million note gave Voit three choices. He could extend the loan to a date of his choosing. He could revoke the 10 percent increase in Malliet's interest in the Company due at the end of 2011. Or he could take a 50 percent interest in a piece of real estate owned by one of Malliet's companies. The note further provided that picking either of the last two choices "shall satisfy the Balance in full, whereupon [Voit] shall cancel this Note."

Malliet defaulted, and Voit chose to revoke Malliet's 10 percent increase in the Company. He then canceled the $1 million note. As of December 2015, Voit had received a partial payment on the $5 million note from the Company.

The 2012 Capital Call and the Appraisal

Under the terms of the Agreement, a member who did not respond to a capital call became a "Declining Member." In that event, the Agreement provided a procedure whereby the Declining Member's interest could be bought out by the other member. In essence, unless the members agreed on a number, each member would hire someone to appraise the fair market value of the Declining Member's interest. If these appraisers could not agree, they would select a third appraiser, the "tie-breaker appraiser," whose decision about fair market value would be final. This process was supposed to move quickly. The individual appraisers had to be selected within 15 days after the 30 days the members were allotted to come to an agreement about fair market value between themselves. The individual appraisers had 15 days to complete their appraisals and 30 days after that to pick the tie-breaker appraiser if one was needed.

In April 2012, the Company issued a capital call to its members. The call was renewed in May. Malliet's share was $600,000. He did not provide these funds, and Voit informed him that he was now a "Declining Member." Voit also exercised his right to buy Malliet's interest in the Company. Malliet was then fired in July 2012.

Malliet disputed whether he was a Declining Member and claimed he had a right to an economic interest in the Company. Despite this disagreement, Voit and Malliet each hired appraisers to determine the fair market value. The appraisals came in millions of dollars apart. Before the tie-breaker appraiser could be appointed, however, Malliet refused to participate any longer in the process. By that time, Voit had expended $55,000 on the appraisal process.

The Lawsuit and the Trial

Malliet's withdrawal from the appraisal process prompted Voit to sue Malliet for declaratory and injunctive relief on May 29, 2013. In essence, he wanted a court order compelling Malliet to complete the appraisal process. Malliet answered the complaint and cross-complained against Voit. The second amended cross-complaint, filed April 9, 2014, is the operative pleading.

Voit filed a petition for an order appointing a tie-breaker appraiser on September 4, 2014. Malliet opposed the petition, in part on the grounds that he was not a Declining Member. The petition was denied.

In anticipation of a July 2015 trial date, the parties filed joint stipulations of fact, on July 17. Among these facts were Malliet's acknowledgements that he was a Declining Member and that Voit had a right to buy his interest in the Company.

The Limited Partnership was sold to a brokerage firm at the end of September 2015. Accordingly, Voit dismissed his complaint, on November 19, 2015, as it was no longer necessary to value Malliet's interest in the Company. Under the terms of the Agreement, "[t]he sale of all or substantially all of the assets of [the] Company" triggered the Company's dissolution and winding up. The Company held a 99 percent interest in the Limited Partnership.

The court trial of Malliet's cross-complaint began in December 2015. The six-day trial concluded in February 2016. The court issued its tentative decision in April,

finding in Voit's favor on all issues. The court's two key decisions before us now were (1) the value of Malliet's 20 percent interest in the Company would be determined through the statutory winding-up process of the Corporations Code and (2) Malliet was not entitled to 20 percent of whatever the Company repaid on the $5 million note.

The final statement of decision was filed on June 15, and judgment was entered June 20, 2016. Malliet filed a notice of appeal from this judgment on July 8. A "corrected" judgment was filed on December 2, 2016, the correction being the addition of amounts for attorney fees and costs. Malliet appealed from this judgment on December 15.[4]

The Postjudgment Petition

On May 13, 2016, after the court had issued the tentative decision and before the final statement of decision and judgment had been filed, Malliet petitioned to compel the completion of the appraisal of the fair market value of his 20 percent interest in the Company. The petition was heard on June 23, shortly after the entry of judgment. The court denied the petition by order dated July 1 and corrected it by order nunc pro tunc on July 13, 2016. Malliet filed notices of appeal from both orders. All five appeals have been consolidated for briefing, argument, and disposition.

DISCUSSION

Malliet has identified three issues on appeal. He asserts that he is entitled to the fair market value of his 20 percent interest in the Company, to be determined through the appraisal process. He also claims he is entitled to 20 percent of whatever the Company repaid Voit pursuant to the 2011 $5 million promissory note. Finally, he asserts that the court erred in denying his postjudgment petition to compel the completion of the appraisal process begun in 2012.

[4] Malliet also filed a separate notice of appeal, on November 14, 2016, of the postjudgment attorney fee order entered on November 4.

I. The Judgment (Appeals G053757 and G054385)

Malliet's opening brief identifies two specific disagreements with the judgment: (1) he is entitled to 20 percent interest in the Company, the value of which must be determined by completing the contractual appraisal process, and (2) he is entitled to 20 percent of whatever the Company repays on the $5 million note.

A. Malliet's 20 Percent Interest in the Company

The judgment provides that the Company was dissolved as of October 1, 2015. Malliet contends on appeal that he is entitled to the value of his 20 percent interest in the Company. The trial court did not hold otherwise. In accordance with a stipulated fact, the court held that he still had his interest. Where Malliet and the trial court parted company was over how to determine the value of this interest.

Malliet insisted that the value of his interest had to be determined through the appraisal process. The court concluded that, since the Company was dissolved, the value of Malliet's interest would be determined through the statutory process for the dissolution and winding up of a limited liability company, as set forth in Corporations Code sections 17707.01 et seq.[5] The appraisal process no longer applied. We now turn to this aspect of the trial court's decision.

B. Completing the Appraisal Process

In the statement of decision, the trial court gave several reasons for refusing to revive the appraisal process as part of the lawsuit. First, Voit's notice of election to start the appraisal process was not irrevocable. Second, Malliet's own conduct frustrated the appraisal process, which was supposed to be a speedy one: He withdrew from the process after the first appraisals; he exercised an incongruous right to retain an economic interest in the Company; he spent roughly three years disputing Voit's right to buy him

[5] The actual process of winding up the Company was beyond the scope of the trial and, consequently, is beyond the scope of this appeal.

out (i.e., his denial he was a Declining Member) only to stipulate on the eve of the trial date in July 2015 that he was a Declining Member and that Voit had the right to buy him out. He also requested the Company's dissolution in the operative second amended complaint, a request inconsistent with a demand for an appraisal. Third, the Company had been dissolved, and a buyout of Malliet's interest was therefore "obsolete."

The framework for analysis chosen by the parties was to treat the appraisal process as a form of arbitration. We will adopt that framework.

Code of Civil Procedure section 1281.2 provides in pertinent part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: [¶] (a) The right to compel arbitration has been waived by the petitioner . . . ." Whether a party has waived the right to compel arbitration is usually a question of fact, and we affirm the trial court's findings if they are supported by sufficient evidence. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1196.) "On appeal, we review waiver as a factual inquiry for the trial court, and will affirm if substantial evidence supports the trial court's determination. [Citation.] We construe any reasonable inference in the manner most favorable to the judgment, resolving all ambiguities to support an affirmance. [Citation.]" (*Burton v. Cruise* (2010) 190 Cal.App.4th 939, 946 (*Burton*).) "'"It was the trial court's duty to determine whether" the petitioners met their "burden of proof; it is our duty to determine whether there is substantial evidence to support the trial court's findings that [they] did."' [Citations.] 'Although the burden of proof is heavy on the party seeking to establish waiver, which should not lightly be inferred in light of public policy favoring arbitration, a determination by a trial court that the right to compel arbitration has been waived

ordinarily involves a question of fact, which is binding on the appellate court if supported by substantial evidence. The appellate court may not reverse the trial court's finding of waiver unless the record as a matter of law compels finding nonwaiver.' [Citation.]" (*Id.* at pp. 945-946.)

In this case, the trial court found that Malliet had waived any right to conclude the appraisal process. Substantial evidence supported this finding. Malliet held up the arbitration process for three years while the matter was litigated in the trial court, including opposing Voit's 2014 petition to compel him to complete the process. The court found Malliet's refusal to participate in the appraisal process in 2012 and 2013 was not excused. His ostensible justification – Voit had submitted an incorrect appraisal – did not excuse him; he presented no documentary evidence that he identified any error to Voit during that time, and any errors in the appraisals could have been placed before the tie-breaker appraiser.[6] Malliet stipulated in July 2015, that Voit had the right to buy him out, but as of the December 2015 trial he had not taken any steps to restart the process.[7] As the court stated, "By late 2015, any benefit Mr. Voit stood to obtain for purchasing Malliet's interest had been denied him in the ensuing three years since he gave notice. By then, the asset [i.e., the Limited Partnership] was sold and [the Company] was in dissolution." "True, California has a strong public policy in favor of arbitration. But that public policy is founded upon the notion that arbitration is a '"'speedy and relatively inexpensive means of dispute resolution.'"' [Citation.] That goal was frustrated by defendant's conduct." (*Adolph v. Coastal Auto Sales, Inc.* (2010) 184 Cal.App.4th 1443, 1452.)

---

[6] Malliet relied heavily on an accounting error that caused a 2012 capital contribution from Voit to be booked as a loan. The error was corrected in 2015. The trial court heard extensive testimony on this issue and ruled in Voit's favor.

[7] In fact, he waited until May 2016 – after the trial court had issued a tentative decision in Voit's favor – to file his petition to compel the valuation process.

Because we affirm the trial court's conclusion that Malliet waived any entitlement to continue the arbitration process, we need not address the other grounds for the court's refusal to order its completion. Malliet is entitled to his 20 percent interest in the Company as determined by the dissolution process described in the Corporations Code.

C. The Promissory Notes

Although a security agreement accompanied the $1 million promissory note between Voit and Malliet – pledging Malliet's increased share in the Company as collateral for his debt – the parties and the court treated the note as a stand-alone agreement, without reference to the Commercial Code statutes relating to secured transactions.[8] Accordingly, we will review the issue without consulting the Commercial Code.

When the facts are undisputed, we review a trial court's conclusions of law de novo. (*CTC Real Estate Services v. Lepe* (2006) 140 Cal.App.4th 856, 859-860.) In this case, the wording of the $1 million note is undisputed, as are the facts surrounding the default.

The impetus for the $1 million note was Voit's disinclination to be the sole source of the money needed to conduct the Company's business. He wanted Malliet to "have [some] skin in the game." Voit was willing to lend the necessary funds to Malliet, but he wanted to be repaid.

The $1 million note gave Voit three repayment alternatives. Malliet could pay him $1 million by the due date. If he failed to do so, Voit could nullify Malliet's automatic 10 percent increase in his share of the Company, which, if it had taken place, would have reduced Voit's interest to 70 percent in 2012. Or Voit could take a 50 percent interest in a real estate project owned by Malliet.

---

[8] See, e.g., Commercial Code section 9203, subdivision (b).

Malliet did not pay Voit $1 million by the due date. So in place of the money, Voit took the 10 percent interest. As he himself testified at trial, he did not expect Malliet to pay him back and then have the Company pay that money back to him as well.[9]

A slight adjustment of the facts can perhaps provide better focus. Suppose that instead of borrowing $1 million from Voit, Malliet had gone to a bank for a loan to fund his portion of the $5 million note. The bank agreed to lend him $1 million, and, as collateral, Malliet put up an heirloom diamond necklace. The parties further agreed that if Malliet did not repay the loan by a certain date, the bank could keep the necklace. The bank then wired $1 million to Voit, who combined it with his own $4 million to make a loan to the Company, memorialized by the $5 million note. The $1 million was never in Malliet's possession.

Malliet then defaulted on his bank loan; he did not repay the $1 million by the specified date. So, as the parties had agreed, the bank now owned the necklace. The transaction between the bank and Malliet was concluded, and neither party had any further obligation to the other.

But what happened to the $1 million the bank wired to Voit? To whom does it now belong? The answer has to be Malliet. In effect, he sold the necklace to the bank for $1 million. If or when the Company repaid the $5 million note, the bank would not get to keep the necklace *and* recover the $1 million. When the bank lent the money to Malliet, it had a claim to be repaid. But after the default, the bank reimbursed itself by taking the necklace. It traded the money for the collateral.

---

[9] Voit also testified, "Should the [$5 million] note not be paid, I would say [Malliet] has no entitlement to [repayment]. Should there be any profit, above that, yes, as a 20 percent owner he would be [entitled to repayment]."

That is the essence of the situation here, obscured by the fact that Voit acted both his own part and the role of the bank. When Malliet defaulted on the $1 million note, Voit satisfied the debt by taking away Malliet's automatic 10 percent increase in his interest in the Company. As the note itself provided, taking the 10 percent increase "shall satisfy the Balance in full." This means *either* the $1 million *or* the 10 percent increase was Malliet's "skin in the game." But not both. In effect, Malliet sold his 10 percent increase to Voit for $1 million, which became his share of the $5 million note and reduced Voit's share accordingly. Voit cannot keep the 10 percent increased interest *and* all the money. Even he recognized that fact, and he so testified at trial.

Malliet muddied the waters by asking for reformation of the $5 million note, which the trial court properly refused because Malliet was not a party to the note. (See Civ. Code, § 3399.) He was also not entitled to equitable subrogation, as the court explained in the statement of decision.[10] Malliet had, however, asserted a cause of action for declaratory relief regarding his entitlement to 20 percent of whatever the Company repaid Voit on the $5 million note, and he asked for relief based on unjust enrichment.

Unjust enrichment requires "receipt of a benefit and unjust retention of the benefit at the expense of another." (*Lectrodryer v. Seoulbank* (2000) 77 Cal.App.4th 723, 726; see *First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1662 ["A person is enriched if the person receives a benefit at another's expense."].) Voit would be unjustly enriched if he were to keep Malliet's 10 percent interest in the Company *and* all of whatever money the Company repays pursuant to the $5 million note.

Voit now relies heavily on the fact that the $1 million note was canceled. The note was indeed canceled; since a promissory note can become a negotiable instrument (*Creative Ventures, LLC v. Jim Ward & Associates* (2011) 195 Cal.App.4th

[10] "The doctrine of equitable subrogation implies a right to recover from the principal debtor when the subrogee pays the debtor's obligation to a creditor in order to protect the subrogee's own interest." (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 947.)

1430, 1445; Comm. Code, § 3104), it was important to indicate that the debt no longer existed. But canceling the note did not undo the transaction. Canceling the note did not cause the $1 million to vanish.

Kossian v. American Nat. Ins. Co. (1967) 254 Cal.App.2d 647 (*Kossian*) illustrates some of these principles. In *Kossian*, the owner of a hotel destroyed by fire hired the plaintiff to clean up the debris. The charge for the clean-up was $18,000. After the work was completed, the hotel owner went bankrupt, and the insurance company defendant, holder of the first trust deed, took over the property. The new owner made a claim against the hotel's fire insurance policies and ultimately settled with the fire insurance companies for $135,620, which included the charge for removing and cleaning up the debris from the fire. (*Id.* at p. 648.)

Kossian sued to recover the $18,000 he was owed for the clean-up. The new owner argued it had no contract with him and he was not a party to the fire insurance contracts. It never made any agreement, express or implied, to pay him for debris removal. (*Kossian, supra,* 254 Cal.App.2d at pp. 648-649.)

The reviewing court held the plaintiff entitled to his proportionate share of the insurance proceeds under a theory of restitution: "'The Restatement of this Subject [i.e., restitution] deals with situations in which one person is accountable to another on the ground that otherwise he would unjustly benefit or the other would unjustly suffer loss.'" [Citation.] [¶] The question, simply stated, is whether in a jurisdiction that recognizes the equitable doctrine of unjust enrichment one party should be indemnified twice for the same loss, once in labor and materials and again in money, to the detriment (forfeiture) of the party who furnished the labor and materials. We conclude that the doctrine of unjust enrichment is applicable to the facts of this case, and that plaintiff is entitled to reimbursement out of the insurance proceeds paid defendant for work done by plaintiff." (*Kossian, supra,* 254 Cal.App.2d at p. 651.) As the court explained, "Had the

circumstances been simply that defendant, by foreclosure, took the property improved by plaintiff's debris removal, there would be a benefit conferred upon defendant by plaintiff, but no unjust enrichment. [Citation.] It is the additional fact that defendant made a claim to the insurance carriers for the value of work done by plaintiff that is the nub of the case." (*Id.* at p. 649.)

The same principle, mutatis mutandis, is at work here. If Voit had simply canceled the $1 million note, without taking Malliet's 10 percent interest, there would be no unjust enrichment. As it stands, however, Voit has been (or may be) paid twice: once by revoking the 10 percent interest – thereby maintaining his own at 80 percent – and again by recouping whatever the Company has repaid or will repay on the $5 million note.

The judgment must be modified to award Malliet 20 percent of whatever the Company has repaid or does repay on the $5 million note. As of October 1, 2015, any repayment is subject to the provisions of the Corporations Code involving the dissolution and winding up of a limited liability company.

II. Postjudgment Petition to Compel Appraisal Process (Appeals G053767 and G053912)

Voit instituted the appraisal process in 2012, after Malliet refused to respond to the Company's capital call. Although he disputed his characterization as a Declining Member, Malliet completed the stage of the process calling for each party to appoint appraisers. After the initial appraisals were turned in, he refused to go forward. He opposed Voit's petition to compel completion of the appraisal process, filed in the legal action, and the petition was denied.

In the final statement of decision, the trial court explained why it declined to order Voit to retroactively purchase Malliet's interest in the Company, noting that the Voit complaint, which had asked for this relief, had been dismissed prior to trial and no

cause of action in Malliet's second amended cross-complaint supported such an order. The trial court further noted that the Company was now dissolved because all or substantially all of its assets had been sold, an event triggering dissolution under both the Agreement and the Corporations Code. This event occurred between the initial trial date (July 2015) and the beginning of the actual trial (December 2015). The sale materially altered the approach to the appraisal issue. As of the time judgment was entered, Malliet still held his 20 percent interest in the Company. The trial court also answered "no" to the controverted issue of "Whether Voit's exercise of his Option to purchase Malliet's 20% interest in the [Company] . . . requires that Voit complete the purchase following the valuation process."

In denying Malliet's postjudgment petition to compel Voit to complete the appraisal process, the court held, in essence, that whether the process had to go forward had been decided at trial. The court quoted extensively from the final statement of decision as definitive in holding that the petition was moot.[11]

On appeal, Malliet presents several arguments regarding the denial of the postjudgment valuation petition. Most of the arguments relating to the court's decision on the postjudgment petition simply repeat those relating to the judgment on this issue.

The trial court denied the petition in essence because the issue it raised had already been decided at the trial. For the most part, the order simply reiterated the court's findings as set forth in the statement of decision. The ruling on the petition explicitly rejected Malliet's claim that the appraisal process remained alive after the trial, based on

---

[11] There is an error in the order dated July 1, 2016, regarding the trial court's holding. The order states, "Finally, in response to controverted issue no. 12, which asked whether Malliet continues to hold a 20% membership interest in [the Company], the court answered 'no.' (See S[tatement] O[f] D[ecision], p. 10."

Controverted issue no. 12 stated, "Whether Malliet is entitled to a 20% share of the January 1, 2011, $5.0 Million Promissory Note that [the Company] gave to Voit for the loan made by Malliet (20%) and Voit (80%) to [the Company]." The trial court did indeed answer "no" to that controverted fact. It also held, pursuant to a stipulated fact, that "Mr. Malliet's membership interest remained at 20%."

The error in this order does not affect the outcome of the appeal.

one of the controverted facts, because the list of controverted facts predated the trial, the statement of decision, and the judgment.

Once a judgment is entered, there are only a few ways to change it in the trial court. (See *Bowman v. Bowman* (1947) 29 Cal.2d 808, 814, superseded by statute on other grounds ["Trial courts can modify or amend their judgments only as prescribed by statute . . . ."]) A party can move for a judgment notwithstanding the verdict, or a new trial, or for relief under Code of Civil Procedure section 473. (See *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1237-1238.)

In this case, the trial court decided at the conclusion of trial that the appraisal process was dead. This is one of the issues Malliet has identified in his appeals from the judgment. Any attempt to revive the process in a posttrial motion is in effect an attempt to modify the judgment. Malliet availed himself of none of the statutory methods for modifying or changing a judgment in the trial court. We therefore conclude the court correctly denied Malliet's postjudgment petition to compel the valuation.

III. The Attorney Fee Order (Appeal G054279)

Although Malliet filed a notice of appeal from the postjudgment order granting Voit his attorney fees, Malliet has raised no issue on appeal regarding attorney fees. Accordingly, we treat this appeal has having been abandoned. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

DISPOSITION

The two orders denying appellant's postjudgment petition to compel completion of the appraisal process (appeals G053767 and G053912) are affirmed. The postjudgment attorney fee order (appeal G054279) is affirmed. The judgment and the corrected judgment (appeals G053757 and G054385) are reversed only to award appellant 20 percent of any amounts repaid or to be repaid by the Company pursuant to the $5 million note, subject, from and after October 1, 2015, to the dissolution process of Corporations Code sections 17707.01 et seq. The parties may stipulate to an amount that

is 20 percent of pre-October 1 repayments, which amount will be incorporated into a modified judgment as awarded to appellant. If the parties do not stipulate to the amount to be awarded to appellant for pre-October 1 repayments, the court will hold a hearing to determine the amount, which will then be incorporated into the modified judgment. The judgment and the corrected judgment are affirmed in all other respects. The parties will bear their own costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.